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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| VINCENT AGOSTINO, | : | <u>ORAL ARGUMENT REQUESTED</u> |
| | : | |
| Plaintiff, | : | <u>ECF Case.</u> |
| | : | Civil Action No. |
| -against- | : | 08-CV-05760 (CS) (MDF) |
| | : | |
| DAVID SIMPSON, individually, WILLIAM | : | <u>NOTICE OF MOTION TO DISMISS</u> |
| REGAN, individually, PHILIP AMICONE, | : | |
| individually, and the CITY OF YONKERS, | : | |
| New York, | : | |
| | : | |
| Defendants. | : | |
| ----- | x | |

PLEASE TAKE NOTICE that upon the accompanying Memorandum Of Law, defendants David Simpson, William Regan, Phillip Amicone and the City of Yonkers, New York will move this Court on Friday September 12, 2008 at 10:00 am, or as soon thereafter as counsel can be heard, before the Honorable Cathy Seibel, United States District Judge for the Southern District of New York, at the United States Courthouse, 300 Quarropas Street, White Plains, NY 10601-415 for an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint for failure to state a claim upon which relief may be granted.

PLEASE TAKE FURTHER NOTICE that Pursuant to Local Rule 6.1 for the Southern District of New York, any opposition papers must be served upon defendants within 10 business days after service of the moving papers (or September 3, 2008), and reply affidavits and

memoranda of law shall be served within five business days after service of the answering papers.

Dated: New York, New York
August 21, 2008

Respectfully submitted,

FOX ROTHSCHILD LLP

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